

**REDACTED DECISION – DOCKET NUMBER 10-032 P – BY MATTHEW R. IRBY  
ADMINISTRATIVE LAW JUDGE – SUBMITTED FOR DECISION ON AUGUST 16,  
2011 – ISSUED ON FEBRUARY 15, 2012**

**SYNOPSIS POINTS**

**WEST VIRGINIA OFFICE OF TAX APPEALS -- BURDEN OF PROOF --** In a hearing before the West Virginia Office of Tax Appeals, on a petition for refund or credit, the burden of proof is upon the Petitioners to show that they are entitled to the refund or credit claimed by them. *See* W. Va. Code Ann. § 11-10A-10(e) (West 2010) and W. Va. Code R. §§ 121-1-63.1 and 69.2 (2003)

**TAX ADMINISTRATION -- LIMITATION PERIOD ON REFUNDS OR CREDITS --** Whenever a taxpayer claims to be entitled to a refund or credit of any tax (or fee), additions to tax, penalties or interest imposed by this article, or any article of this chapter, or of this code, administered under this article, paid into the treasury of this state, the taxpayer shall, except as provided in subsection (d) of this section, file a claim for refund, or credit, within three years after the due date of the return. ” W.Va. Code Ann. § 11-10-14(l)(1) (West 2010)

**WEST VIRGINIA OFFICE OF TAX APPEALS -- FAILURE TO MEET BURDEN OF PROOF --** The Petitioners have failed to carry their burden of showing that they filed their claim for refund or credit within three years of the due date of their 1999 or 2000 personal income tax return. *See* W.Va. Code Ann. § 11-10-14(l)(1) (West 2010)

**TAX ADMINISTRATION -- EXCEPTIONS TO LIMITATION PERIOD ON REFUNDS OR CREDITS --** The Petitioners have failed to carry their burden of showing that their claim for refund or credit is within any exception to the general rule that the claim must be made within three years of the due date of the return. *See* W.Va. Code Ann. § 11-10-14(l)(2)-(5) (West 2010)

**WEST VIRGINIA OFFICE OF TAX APPEALS -- FAILURE TO MEET BURDEN OF PROOF --** The Petitioners in this matter have thus failed to carry their burden of showing that they were entitled to claim such refund against their tax liability on their 2008 tax return.

**TAX ADMINISTRATION -- ADDITIONS TO TAX --** The Petitioners in this matter have carried their burden in showing that their failure to pay the entire amount owed on their

2008 tax return was due to reasonable cause and are entitled to a waiver of penalty. *See* W. Va. Code Ann. § 11-10-18(a) (West 2010)

### **FINAL DECISION**

On December 21, 2009, the Respondent, the West Virginia State Tax Department, issued a personal income tax assessment against the Petitioners. This assessment was issued pursuant to the authorization of the State Tax Commissioner, under the provisions of Chapter 11, Articles 10 and 21 of the West Virginia Code. The assessment was for the tax year ending December 31, 2008, for tax in the amount of \$\_\_\_\_\_, interest in the amount of \$\_\_\_\_\_, computed through December 21, 2009, and additions to tax in the amount of \$\_\_\_\_\_, for a total assessed tax liability of \$\_\_\_\_\_. Written notice of this assessment was served on the Petitioners.

Thereafter, the Petitioners timely filed with this tribunal, the West Virginia Office of Tax Appeals, a petition for reassessment. *See* W. Va. Code Ann. § 11-10A-8(1) (West 2010). Subsequently, notice of a hearing on the petition was sent to the Petitioners and a hearing was held in accordance with the provisions of West Virginia Code Section 11-10A-10.

### **FINDINGS OF FACT**

1. On, or about, August 14, 2006, the Respondent issued a personal income tax assessment against the Petitioners for tax year 1999, for tax in the amount of \$\_\_\_\_\_, interest in the amount of \$\_\_\_\_\_, computed through December 21, 2009, additions to tax in the amount of \$\_\_\_\_\_, and penalty in the amount of \$\_\_\_\_\_, for a total assessed tax liability of \$\_\_\_\_\_.

2. On, or about, August 14, 2006, the Respondent also issued a personal income tax assessment against the Petitioners for tax year 2000, for tax in the amount of \$\_\_\_\_\_, interest in the amount of \$\_\_\_\_\_, computed through December 21, 2009, additions to tax in the amount of \$3,150.51, and penalty in the amount of \$\_\_\_\_\_, for a total assessed tax liability of \$\_\_\_\_\_.

3. On, or about, November 14, 2006, the Petitioners responded to the previous personal income tax assessments with a copy of their 1999 personal income tax return, signed and dated August 9, 2000, and a request for refund of \$\_\_\_\_\_. Additionally, sometime thereafter, the Petitioners supplied the Respondent with a newly computed 2000 income tax return and a request for refund.

4. Based on the information in the 1999 and 2000 personal income tax returns supplied by the Petitioners, the Respondent removed the previous assessments of personal income tax from 1999 and 2000. No action was taken on the Petitioners' requests for refund.

5. On, or about, June 11, 2007, and November 27, 2007, the Petitioners made additional requests for refund in the amount of \$\_\_\_\_\_, plus interest based on their 1999 and 2000 personal income tax returns. The Petitioners received no response.

6. On, or about, April 15, 2009, the Petitioners filed their 2008 personal income tax return indicating a tax liability of \$\_\_\_\_\_. The Petitioners reduced that liability by alleged estimated payments of \$\_\_\_\_\_, and remitted \_\_\_\_\_ with their return. However, the Respondent only received \$\_\_\_\_\_ in estimated payments.

7. The Petitioners stated that they reduced the amount due by applying their calculated refund from their 1999 and 2000 tax returns. This equaled \$\_\_\_\_\_.

7. On, or about, December 21, 2009, the Respondent issued a personal income tax assessment against the Petitioners for tax in the amount of \$\_\_\_\_\_, interest in the amount of \$\_\_\_\_\_, computed through December 21, 2009, and additions to tax in the amount of \$\_\_\_\_\_, for a total assessed tax liability of \$\_\_\_\_\_.

### **DISCUSSION**

The issue presented is whether the Petitioners remitted the correct amount of personal income tax to satisfy the liability calculated on their 2008 personal income tax return. This issue hinges entirely upon whether the Petitioners are permitted to apply a refund from their 1999 and 2000 personal income tax returns, filed in 2006, to their personal income tax liability incurred in the tax year ending December 31, 2008.

It should be noted that generally, taxpayers who claim they are entitled to a refund can elect to have that refund applied to future tax liabilities. *See* W. Va. Code Ann. § 11-10-14(a) (West 2010). The problem for the Petitioners in this matter is that their refund claims for tax years 1999 and 2000 were not made until November of 2006. Based upon the applicable law, these refund claims were not timely.

West Virginia Code Section 11-10-14(l) provides, in pertinent part:

(l) Limitation on claims for refund or credit –

(1) General rule -- *Whenever a taxpayer claims to be entitled to a refund or credit of any tax (or fee), additions to tax, penalties or interest imposed by this article, or any article of this chapter, or of this code, administered under this article, paid into the treasury of this state, the taxpayer shall, except as provided in subsection (d) of this section, file a claim for refund, or credit, within three years after the due date of the return in respect of which the tax (or fee) was imposed, determined by including any authorized extension of time for filing the return, or within two years from the date the tax, (or fee), was paid, whichever of the periods expires the later, or if no return was filed by the taxpayer, within two years from the time the tax (or fee) was paid, and not thereafter.*

W. Va. Code Ann. § 11-10-14(l) (West 2010) (Emphasis added.)

It should be noted at the outset, that the 1999 state income tax return provided by the Petitioners, in evidence, was signed and dated August 9, 2000. However, the Petitioners never stated that the return was sent to the Respondent in a timely manner, and the Petitioners never made a request for payment of the refund until they were assessed for failure to file returns in 1999 and 2000. Additionally, there was no evidence placed in the record regarding the filing date of the 2000 return. Here, the Petitioners' 1999 and 2000 returns were due on April 15 of 2000 and 2001, respectively. As stated above, the Petitioners did not file their refund claims until 2006, well beyond the three year deadline contained in Section 14(l). Therefore, the Petitioners have failed to carry their burden that the claim for refund was within the limitation period outlined by West Virginia Code Section 11-10-14(l).

However, there are a number of exceptions to the general rule that the claim must be made within three years of the due date of the return. First, the time for claim for refund may be extended by agreement, either on the claim or on the assessment. *See* W. Va. Code Ann. § 11-10-14(l)(2) and (3) (West 2010). In the instant case, there was no evidence of any agreement to extend either the time to claim a refund or the time for assessment.

Also, beyond the three year window, a claim for refund may be made within six months "of a final determination by the United States Internal Revenue Service or other competent authority of an overpayment in the taxpayer's federal income or estate tax liability." *See* W. Va. Code Ann. § 11-10-14(l)(4) (West 2010). Again, there was no evidence presented indicating that the Internal Revenue Service made a determination of an overpayment of the Petitioners federal income or estate tax liability for the tax years in question.

Finally, a claim for refund may be made within ninety days of payment to another state of erroneously paid taxes to this state in certain circumstances. As above, there was no evidence indicating such an arrangement.

Thus, the claim for refund clearly fell outside of the three-year limitation window for which to make such a claim. To this end, Taxpayers who file their personal income tax return for a given year outside of the generally applicable three-year statute-of-limitations period provided by West Virginia Code Section 11-10-14(l)(1) are not permitted to claim a credit for a refund shown on said tax return against a valid income tax liability for a subsequent year.

However, Respondent's counsel conceded that the claim for refund, and subsequent application of the refund as a credit on their 2008 taxes was in good faith. Under West Virginia Code Section 11-10-18(a), additions to tax may be waived if failure to pay or remit tax is due to reasonable cause. Based upon the statements of the Respondent's counsel, reasonable cause was shown in the instant case.

### **CONCLUSIONS OF LAW**

Based upon all of the above it is **DETERMINED** that:

1. In a hearing before the West Virginia Office of Tax Appeals, on a petition for refund or credit, the burden of proof is upon the Petitioners to show that they are entitled to the refund or credit claimed by them. *See* W. Va. Code Ann. § 11-10A-10(e) (West 2010) and W. Va. Code R. §§ 121-1-63.1 and 69.2 (2003)

2. "Whenever a taxpayer claims to be entitled to a refund or credit of any tax (or fee), additions to tax, penalties or interest imposed by this article, or any article of this chapter, or of this code, administered under this article, paid into the treasury of this state, the taxpayer shall,

except as provided in subsection (d) of this section, file a claim for refund, or credit, within three years after the due date of the return.” W. Va. Code Ann. § 11-10-14(l)(1) (West 2010)

3. The Petitioners have failed to carry their burden of showing that they filed their claim for refund or credit within three years of the due date of their 1999 or 2000 personal income tax return.

4. The Petitioners have failed to carry their burden of showing that their claim for refund or credit is within any exception to the general rule that the claim must be made within three years of the due date of the return. *See* W.Va. Code Ann. § 11-10-14(l)(2)-(5) (West 2010)

5. The Petitioners, in this matter, have thus failed to carry their burden of showing that they were entitled to claim such refund against their tax liability on their 2008 tax return.

6. The Petitioners, in this matter, have carried their burden in showing that their failure to pay the entire amount owed on their 2008 tax return was due to reasonable cause and are entitled to a waiver of penalty. *See* W. Va. Code Ann. § 11-10-18(a) (West 2010)

### **DISPOSITION**

**WHEREFORE**, it is the **FINAL DECISION** of the West Virginia Office of Tax Appeals that the West Virginia personal income tax assessment issued against the Petitioners for the tax year ending December 31, 2008, should be and is hereby **AFFIRMED** as to the tax and interest; the additions to tax are, however, **VACATED** in full.

Interest continues to accrue on this assessment until the same is fully paid.

**WEST VIRGINIA OFFICE OF TAX APPEALS**